

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 1282**

Short Title: Criminal Background Checks Long-Term Care.

(Public)

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Sponsors: Representatives Weiss; Morris, Luebke, and Jeffus.

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Referred to: Judiciary II.

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April 12, 2001

A BILL TO BE ENTITLED

1  
2 AN ACT TO PROVIDE FOR DEPARTMENTAL REVIEW OF CRIMINAL  
3 HISTORY RECORD CHECKS TO DETERMINE IF PERSONS EMPLOYED IN  
4 ADULT CARE HOMES AND NURSING HOMES ARE FIT TO BE  
5 RESPONSIBLE FOR THE SAFETY AND WELL-BEING OF AGED OR  
6 DISABLED PERSONS; AND TO PROVIDE THAT INDIVIDUALS  
7 DETERMINED TO BE UNFIT TO BE RESPONSIBLE FOR THE SAFETY AND  
8 WELL-BEING OF AGED OR DISABLED INDIVIDUALS MAY NOT BE  
9 EMPLOYED IN ADULT CARE HOMES AND NURSING HOMES.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 131D-40 reads as rewritten:

12 "**§ 131D-40. Criminal history record checks required for certain applicants for**  
13 **employment.**

14 (a) Requirement; Adult Care Home. – An offer of employment by an adult care  
15 home licensed under this Chapter to an applicant to fill a position that does not require  
16 the applicant to have an occupational license is conditioned on consent to a criminal  
17 history record check of the applicant. If the applicant has been a resident of this State  
18 for less than five years, then the offer of employment is conditioned on consent to a  
19 State and national criminal history record check of the applicant. The national criminal  
20 history record check shall include a check of the applicant's fingerprints. If the applicant  
21 has been a resident of this State for five years or more, then the offer is conditioned on  
22 consent to a State criminal history record check of the applicant. An adult care home  
23 shall not employ an applicant who refuses to consent to a criminal history record check  
24 required by this section. Within five business days of making the conditional offer of  
25 employment, an adult care home shall submit a request to the Department of Justice  
26 under G.S. 114-19.10 to conduct a State or national criminal history record check  
27 required by this section, or shall submit a request to a private entity to conduct a State  
28 criminal history record check required by this section. At the time of submitting the

1 request for the criminal history record check, the adult care home shall provide a copy  
2 of the request to the Department of Health and Human Services, Division of Facility  
3 Services. If the criminal history information is provided directly to the adult care home  
4 under G.S. 114-19.10, then within two business days of receiving the criminal history  
5 information, the adult care home shall forward the information to the Department of  
6 Health and Human Services, Division of Facility Services, for a determination of the  
7 individual's fitness as required by this section. All criminal history information received  
8 by the home is confidential and may not be disclosed, except to the applicant as  
9 provided in subsection (b) of this section.

10 (a1) Requirement; Contract Agency of Adult Care Home. – An offer of  
11 employment by a contract agency of an adult care home licensed under this Chapter to  
12 an applicant to fill a position that does not require the applicant to have an occupational  
13 license is conditioned upon consent to a criminal history record check of the applicant.  
14 If the applicant has been a resident of this State for less than five years, then the offer of  
15 employment is conditioned on consent to a State and national criminal history record  
16 check of the applicant. The national criminal history record check shall include a check  
17 of the applicant's fingerprints. If the applicant has been a resident of this State for five  
18 years or more, then the offer is conditioned on consent to a State criminal history record  
19 check of the applicant. A contract agency of an adult care home shall not employ an  
20 applicant who refuses to consent to a criminal history record check required by this  
21 section. Within five business days of making the conditional offer of employment, a  
22 contract agency of an adult care home shall submit a request to the Department of  
23 Justice under G.S. 114-19.10 to conduct a State or national criminal history record  
24 check required by this section, or shall submit a request to a private entity to conduct a  
25 State criminal history record check required by this section. At the time of submitting  
26 the request for the criminal history record check, a contract agency of an adult care  
27 home shall provide a copy of the request to the Department of Health and Human  
28 Services, Division of Facility Services. If the criminal history information is provided  
29 directly to the contract agency under G.S. 114-19.10, then within two business days of  
30 receiving the criminal history information, the contract agency shall forward the  
31 information to the Department of Health and Human Services, Division of Facility  
32 Services, for a determination of the individual's fitness as required by this section. All  
33 criminal history information received by the contract agency is confidential and may not  
34 be disclosed, except to the applicant as provided by subsection (b) of this section.

35 (b) Action. – ~~If an applicant's criminal history record check reveals one or more~~  
36 ~~convictions of a relevant offense, the adult care home or a contract agency of the adult~~  
37 ~~care home shall consider all of the following factors in determining whether to hire the~~  
38 ~~applicant:~~

39 (1) ~~The level and seriousness of the crime.~~

40 (2) ~~The date of the crime.~~

41 (3) ~~The age of the person at the time of the conviction.~~

42 (4) ~~The circumstances surrounding the commission of the crime, if known.~~

1           ~~(5) The nexus between the criminal conduct of the person and the job~~  
2           ~~duties of the position to be filled.~~

3           ~~(6) The prison, jail, probation, parole, rehabilitation, and employment~~  
4           ~~records of the person since the date the crime was committed.~~

5           ~~(7) The subsequent commission by the person of a relevant offense.~~

6           ~~The fact of conviction of a relevant offense alone shall not be a bar to employment;~~  
7           ~~however, the listed factors shall be considered by the adult care home or the contract~~  
8           ~~agency of the adult care home. If the adult care home or a contract agency of the adult~~  
9           ~~care home disqualifies an applicant after consideration of the relevant factors, then the~~  
10           ~~adult care home or the contract agency may disclose information contained in the~~  
11           ~~criminal history record check that is relevant to the disqualification, but may not provide~~  
12           ~~a copy of the criminal history record check to the applicant. Except as provided in~~  
13           ~~subsection (f) of this section, an adult care home or contract agency of an adult care~~  
14           ~~home shall not employ an individual who is subject to a criminal history record check~~  
15           ~~under this section until the criminal history has been reviewed and a determination~~  
16           ~~made by the Department in accordance with this section as to the individual's fitness to~~  
17           ~~have responsibility for the safety and well-being of aged or disabled individuals. An~~  
18           ~~adult care home or contract agency of an adult care home shall not employ an individual~~  
19           ~~who has been determined by the Department to be unfit to be responsible for the safety~~  
20           ~~and well-being of aged or disabled persons. If an applicant's criminal history reveals one~~  
21           ~~or more convictions of an offense listed in subsection (d) of this section, other than~~  
22           ~~homicide or rape or other sex offenses, and the conviction occurred 10 or more years~~  
23           ~~prior to the date of application, the adult care home or contract agency of an adult care~~  
24           ~~home shall consider all of the following factors in determining whether to hire the~~  
25           ~~applicant:~~

26           ~~(1) The level and seriousness of the crime.~~

27           ~~(2) The date of the crime.~~

28           ~~(3) The age of the person at the time of conviction.~~

29           ~~(4) The circumstances surrounding the commission of the crime, if known.~~

30           ~~(5) The nexus between the criminal conduct of the person and the job~~  
31           ~~duties of the position to be filled.~~

32           ~~(6) The prison, jail, probation, parole, rehabilitation, and employment~~  
33           ~~records of the person since the date the crime was committed.~~

34           ~~(7) The subsequent conviction by the person of one or more of the~~  
35           ~~offenses listed in subsection (d) of this section, other than homicide or~~  
36           ~~rape or other sex offense.~~

37           ~~(8) Whether the applicant's name is listed in the Health Care Personnel~~  
38           ~~Registry based on findings by the Department under G.S. 131E-256,~~  
39           ~~and the nature of those findings.~~

40           ~~If the adult care home or contract agency of the adult care home disqualifies an~~  
41           ~~applicant or terminates a conditional employee based on the Department's determination~~  
42           ~~or on its own consideration of the factors in this subsection, then the adult care home or~~

1 the contract agency may disclose information contained in the criminal history record  
2 check or in the Department's determination that is relevant to the disqualification but  
3 may not provide the criminal record check to the applicant.

4 (c) Limited Immunity. – An adult care home and an officer or employee of an  
5 adult care home that, in good faith, complies with this section is not liable for the failure  
6 of the home to employ an individual on the basis of information provided in the  
7 criminal history record check of the individual.

8 (d) ~~Relevant Offense.~~—~~As used in this section, "relevant offense" means a State~~  
9 ~~crime.~~Criminal History. – Criminal history means a county, state, or federal criminal  
10 history of conviction or pending indictment of a crime, whether a misdemeanor or  
11 felony, that bears upon an individual's fitness to have responsibility for the safety and  
12 well-being of aged or disabled persons. These crimes include the criminal offenses set  
13 forth in any of the following Articles of Chapter 14 of the General Statutes: ~~Article 5,~~  
14 ~~Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive~~  
15 ~~and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex~~  
16 ~~Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13,~~  
17 ~~Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material;~~  
18 ~~Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings;~~  
19 ~~Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False~~  
20 ~~Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or~~  
21 ~~Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction~~  
22 ~~Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against~~  
23 ~~Public Morality and Decency; Article 26A, Adult Establishments; Article 27,~~  
24 ~~Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public~~  
25 ~~Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil~~  
26 ~~Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article~~  
27 ~~59, Public Intoxication; and Article 60, Computer Related Crime.~~and Article 59, Public  
28 Intoxication. These crimes also include possession or sale of drugs in violation of the  
29 North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General  
30 Statutes, and alcohol-related offenses such as ~~sale to underage persons in violation of~~  
31 ~~G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-~~  
32 ~~138.5.~~

33 (e) Penalty for Furnishing False Information. – Any applicant for employment  
34 who willfully furnishes, supplies, or otherwise gives false information on an  
35 employment application that is the basis for a criminal history record check under this  
36 section shall be guilty of a Class A1 misdemeanor.

37 (f) Conditional Employment. – An adult care home may employ an applicant  
38 conditionally prior to obtaining a determination from the Department based on its  
39 review of the criminal history conducted under subsection (i) of this section ~~the results~~  
40 ~~of a criminal history record check regarding the applicant~~ if both of the following  
41 requirements are met:

- 1 (1) The adult care home shall not employ an applicant prior to obtaining  
2 the applicant's consent for a criminal history record check as required  
3 in subsection (a) of this section or the completed fingerprint cards as  
4 required in G.S. 114-19.10.
- 5 (2) The adult care home shall submit the request for a criminal history  
6 record check not later than five business days after the individual  
7 begins conditional employment.

8 The adult care home shall terminate immediately the conditional employment of an  
9 individual upon receipt of notification from the Department that it has determined that  
10 the individual is unfit to be responsible for the safety or well-being of aged or disabled  
11 persons.

12 (g) Immunity From Liability. – An entity and officers and employees of an entity  
13 shall be immune from civil liability for failure to check an employee's history of  
14 criminal offenses if the employee's criminal history record check is requested and  
15 received in compliance with this section.

16 (h) Notice to Applicant. – At the time of application, the individual whose  
17 criminal history is to be checked shall be furnished with a statement substantially  
18 similar to the following:

19 **"NOTICE**

20  
21 **MANDATORY CRIMINAL HISTORY CHECK**

22  
23 **NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL**  
24 **HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO**  
25 **PROVIDE CARE TO RESIDENTS OF ADULT CARE HOMES**  
26 **AND WHO ARE NOT REQUIRED TO HAVE AN**  
27 **OCCUPATIONAL LICENSE TO PROVIDE THE CARE.**  
28

29 'Criminal history' includes county, state, and federal convictions or  
30 pending indictments of any of the following crimes: the following  
31 Articles of Chapter 14 of the General Statutes: Article 6, Homicide;  
32 Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article  
33 10, Kidnapping and Abduction; Article 13, Malicious Injury or  
34 Damage by Use of Explosive or Incendiary Device or Material; Article  
35 14, Burglary and Other Housebreakings; Article 15, Arson and Other  
36 Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,  
37 Embezzlement; Article 19, False Pretenses and Cheats; Article 19A,  
38 Obtaining Property or Services by False or Fraudulent Use of Credit  
39 Device or Other Means; Article 20, Frauds; Article 21, Forgery;  
40 Article 26, Offenses against Public Morality and Decency; and Article  
41 59, Public Intoxication; violation of the North Carolina Controlled  
42 Substances Act, Article 5 of Chapter 90 of the General Statutes, and

1 alcohol-related offenses such as driving while impaired in violation of  
2 G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal  
3 law or under the laws of other states. Your fingerprints will be used to  
4 check the criminal history records of the State Bureau of Investigation  
5 (SBI) and the Federal Bureau of Investigation (FBI).

6 If you have ever been convicted of homicide or rape, or if you have  
7 been convicted of any of the other crimes listed in the criminal history  
8 within 10 years preceding the date of application for employment, you  
9 will be determined as unfit to have responsibility for the safety and  
10 well-being of aged or disabled persons. If you have been convicted of  
11 any of the crimes other than murder or rape, and the conviction  
12 occurred 10 or more years preceding the date of application for  
13 employment, the facility may determine your fitness based on your  
14 criminal history information and whether your name is listed in the  
15 Health Care Personnel Registry pursuant to G.S. 131E-256.

16 If it is determined, based on your criminal history or listing in the  
17 Health Care Personnel Registry, that you are unfit to have  
18 responsibility for the safety and well-being of aged or disabled  
19 individuals, you shall have the opportunity to complete, or challenge  
20 the accuracy of, the information contained in the SBI or FBI  
21 identification records or in the Health Care Personnel Registry.

22 If you disagree with the determination of the Department of Health  
23 and Human Services on your fitness to provide care, you may file a  
24 petition for a hearing with the Office of Administrative Hearings under  
25 Chapter 150B of the General Statutes within 60 days of the date you  
26 receive notice of the Department's determination.

27 Any individual who intentionally falsifies any information required to  
28 be furnished to conduct the criminal history shall be guilty of a Class A1  
29 misdemeanor."

30 (i) Department Review of Criminal History. – Within five business days of  
31 receipt of the criminal history of an individual conditionally employed or an applicant  
32 for employment under this section, the Department shall, after review of the criminal  
33 history in accordance with this section, make a determination as to the fitness of the  
34 individual to be responsible for the safety and well-being of aged or disabled persons.  
35 By the next business day following its determination, the Department shall provide its  
36 written determination to the adult care home or contract agency and shall also provide to  
37 the individual applicant or conditional employee a written statement as to the  
38 Department's determination and the basis on which it was made. The notice to the  
39 individual shall also provide that if the individual disagrees with the Department's  
40 determination, the individual may file a petition for a hearing under Chapter 150B of the  
41 General Statutes within 60 days of the date the individual receives the Department's  
42 determination. The Department shall maintain a record of each determination made, and

1 the determination shall be binding on the Department for subsequent reviews of the  
2 same individual except to the extent that new information is obtained by the Department  
3 in the subsequent review. A determination issued by the Department to the requesting  
4 adult care home or contract agency of the adult care home is a final agency decision.  
5 An individual denied employment or terminated from conditional employment based on  
6 the Department's determination may file a petition for a contested case under Chapter  
7 150B of the General Statutes within 60 days of the date the individual receives the  
8 Department's determination. All information that the Department receives through the  
9 checking of the criminal history is privileged information and is not a public record but  
10 is for the exclusive use of the Department and those persons authorized under this  
11 section to receive the information. The Department may destroy the information after it  
12 is used for the purposes authorized by this section after one calendar year.

13 (j) Fitness for Employment. – An applicant is unfit to be responsible for the  
14 safety and well-being of aged or disabled persons if the applicant's criminal history  
15 shows that:

16 (1) The applicant was convicted of any of the offenses of Homicide under  
17 Article 6 of Chapter 14 of the General Statutes or Rape and Other Sex  
18 Offenses under Article 7A of Chapter 14 of the General Statutes.

19 (2) The applicant was convicted of any other offense listed in subsection  
20 (d) of this section within 10 years prior to the date of application for  
21 employment.

22 If an applicant's criminal history shows that the applicant was convicted of an offense  
23 listed in subsection (d) of this section, other than homicide or rape and other sex  
24 offenses, and the conviction occurred 10 or more years prior to the date of the  
25 application, the Department shall obtain the public record document reflecting the  
26 offense and shall provide the public record of that conviction to the adult care home or  
27 contract agency of the adult care home, and the adult care home or contract agency may  
28 consider whether or not to hire the applicant after considering the factors contained in  
29 subsection (b) of this section."

30 **SECTION 2.** G.S. 131E-265 reads as rewritten:

31 **"§ 131E-265. Criminal history record checks required for certain applicants for**  
32 **employment.**

33 (a) Requirement; Nursing Home or Home Care Agency. – An offer of  
34 employment by a nursing home licensed under this Chapter to an applicant to fill a  
35 position that does not require the applicant to have an occupational license is  
36 conditioned on consent to a criminal history record check of the applicant. If the  
37 applicant has been a resident of this State for less than five years, then the offer of  
38 employment is conditioned on consent to a State and national criminal history record  
39 check of the applicant. The national criminal history record check shall include a check  
40 of the applicant's fingerprints. If the applicant has been a resident of this State for five  
41 years or more, then the offer is conditioned on consent to a State criminal history record  
42 check of the applicant. An offer of employment by a home care agency licensed under

1 this Chapter to an applicant to fill a position that requires entering the patient's home is  
2 conditioned on consent to a criminal history record check of the applicant. In addition,  
3 employment status change of a current employee of a home care agency licensed under  
4 this Chapter from a position that does not require entering the patient's home to a  
5 position that requires entering the patient's home shall be conditioned on consent to a  
6 criminal history record check of that current employee. If the applicant for employment  
7 or if the current employee who is changing employment status has been a resident of  
8 this State for less than five years, then the offer of employment or change in  
9 employment status is conditioned on consent to a State and national criminal history  
10 record check. The national criminal history record check shall include a check of the  
11 applicant's or current employee's fingerprints. If the applicant or current employee has  
12 been a resident of this State for five years or more, then the offer is conditioned on  
13 consent to a State criminal history record check of the applicant or current employee  
14 applying for a change in employment status. A nursing home or a home care agency  
15 shall not employ an applicant who refuses to consent to a criminal history record check  
16 required by this section. In addition, a home care agency shall not change a current  
17 employee's employment status from a position that does not require entering the  
18 patient's home to a position that requires entering the patient's home who refuses to  
19 consent to a criminal history record check required by this section. Within five business  
20 days of making the conditional offer of employment, a nursing home or home care  
21 agency shall submit a request to the Department of Justice under G.S. 114.19.10 to  
22 conduct a State or national criminal history record check required by this section, or  
23 shall submit a request to a private entity to conduct a State criminal history record check  
24 required by this section. At the time of submitting the request for the criminal history  
25 record check, the nursing home or home care agency shall provide a copy of the request  
26 to the Department of Health and Human Services, Division of Facility Services. If the  
27 criminal history information is provided directly to the nursing home or home care  
28 agency under G.S. 114-19.10, then within two business days of receiving the criminal  
29 history information the nursing home or home care agency shall forward the  
30 information to the Department of Health and Human Services, Division of Facility  
31 Services, for a determination of the individual's fitness as required by this section. All  
32 criminal history information received by the home or agency is confidential and may  
33 not be disclosed, except to the applicant as provided in subsection (b) of this section.

34 (a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. –  
35 An offer of employment by a contract agency of a nursing home or home care agency  
36 licensed under this Chapter to an applicant to fill a position that does not require the  
37 applicant to have an occupational license is conditioned upon consent to a criminal  
38 history record check of the applicant. If the applicant has been a resident of this State  
39 for less than five years, then the offer of employment is conditioned on consent to a  
40 State and national criminal history record check of the applicant. The national criminal  
41 history record check shall include a check of the applicant's fingerprints. If the applicant  
42 has been a resident of this State for five years or more, then the offer is conditioned on

1 consent to a State criminal history record check of the applicant. A contract agency of a  
2 nursing home or home care agency shall not employ an applicant who refuses to consent  
3 to a criminal history record check required by this section. Within five business days of  
4 making the conditional offer of employment, a contract agency of a nursing home or  
5 home care agency shall submit a request to the Department of Justice under G.S. 114-  
6 19.10 to conduct a State or national criminal history record check required by this  
7 section, or shall submit a request to a private entity to conduct a State criminal history  
8 record check required by this section. At the time of submitting the request for the  
9 criminal history record check, the contract agency of a nursing home or home care  
10 agency shall provide a copy of the request to the Department of Health and Human  
11 Services, Division of Facility Services. If the criminal history information is provided  
12 directly to the contract agency of the nursing home or home care agency under G.S.  
13 114-19.10, then within two business days of receiving the criminal history information,  
14 the contract agency of the nursing home or home care agency shall forward the  
15 information to the Department of Health and Human Services, Division of Facility  
16 Services, for a determination of the individual's fitness as required by this section. All  
17 criminal history information received by the contract agency is confidential and may not  
18 be disclosed, except to the applicant as provided by subsection (b) of this section.

19 (b) ~~Action. – If an applicant's criminal history record check reveals one or more~~  
20 ~~convictions of a relevant offense, the nursing home or home care agency, or the contract~~  
21 ~~agency of a nursing home or home care agency, shall consider all of the following~~  
22 ~~factors in determining whether to hire the applicant:~~

23 (1) ~~The level and seriousness of the crime.~~

24 (2) ~~The date of the crime.~~

25 (3) ~~The age of the person at the time of the conviction.~~

26 (4) ~~The circumstances surrounding the commission of the crime, if known.~~

27 (5) ~~The nexus between the criminal conduct of the person and the job~~  
28 ~~duties of the position to be filled.~~

29 (6) ~~The prison, jail, probation, parole, rehabilitation, and employment~~  
30 ~~records of the person since the date the crime was committed.~~

31 (7) ~~The subsequent commission by the person of a relevant offense.~~

32 ~~The fact of conviction of a relevant offense alone shall not be a bar to employment;~~  
33 ~~however, the listed factors shall be considered by the nursing home or home care~~  
34 ~~agency, or the contract agency of the nursing home or home care agency. If a nursing~~  
35 ~~home, home care agency, or contract agency of a nursing home or home care agency~~  
36 ~~disqualifies an applicant after consideration of the relevant factors, then the nursing~~  
37 ~~home, home care agency, or contract agency may disclose information contained in the~~  
38 ~~criminal history record check that is relevant to the disqualification, but may not provide~~  
39 ~~a copy of the criminal history record check to the applicant.~~Except as provided in  
40 subsection (f) of this section, a nursing home, home care agency, or a contract agency of  
41 a nursing home or home care agency shall not employ an individual who is subject to a  
42 criminal history record check under this section until the criminal history has been

1 reviewed and a determination made by the Department in accordance with this section  
2 as to the individual's fitness to have responsibility for the safety and well-being of aged  
3 or disabled individuals. A nursing home, home care agency, or contract agency of a  
4 nursing home or home care agency shall not employ an individual who has been  
5 determined by the Department to be unfit to be responsible for the safety and well-being  
6 of aged or disabled persons. If an applicant's criminal history reveals one or more  
7 convictions of an offense listed in subsection (d) of this section, other than homicide or  
8 rape or other sex offenses, and the conviction occurred 10 or more years prior to the  
9 date of application, the nursing home, home care agency, or contract agency of the  
10 nursing home or home care agency shall consider all of the following factors in  
11 determining whether to hire the applicant:

- 12 (1) The level and seriousness of the crime.
- 13 (2) The date of the crime.
- 14 (3) The age of the person at the time of conviction.
- 15 (4) The circumstances surrounding the commission of the crime, if known.
- 16 (5) The nexus between the criminal conduct of the person and the job  
17 duties of the position to be filled.
- 18 (6) The prison, jail, probation, parole, rehabilitation, and employment  
19 records of the person since the date the crime was committed.
- 20 (7) The subsequent conviction by the person of one or more of the  
21 offenses listed in subsection (d) of this section, other than homicide or  
22 rape or other sex offense.
- 23 (8) Whether the applicant's name is listed in the Health Care Personnel  
24 Registry based on findings by the Department under G.S. 131E-256,  
25 and the nature of those findings.

26 If the nursing home, home care agency, or contract agency of a nursing home or home  
27 care agency disqualifies an applicant or terminates a conditional employee based on the  
28 Department's determination or on its own consideration of the factors listed in this  
29 subsection, then the nursing home, home care agency, or contract agency of a nursing  
30 home or home care agency may disclose information contained in the criminal history  
31 record check or in the Department's determination that is relevant to the disqualification  
32 but may not provide the criminal history record check to the applicant or conditional  
33 employee.

34 (c) Limited Immunity. – An entity and an officer or employee of an entity that, in  
35 good faith, complies with this section is not liable for the failure of the entity to employ  
36 an individual on the basis of information provided in the criminal history record check  
37 of the individual.

38 (d) Relevant Offense.—~~As used in this section, the term "relevant offense" has~~  
39 ~~the same meaning as in G.S. 131D-40.~~ Criminal History. – Criminal history means a  
40 county, state, or federal criminal history of conviction or pending indictment of a crime,  
41 whether a misdemeanor or felony, that bears upon an individual's fitness to have  
42 responsibility for the safety and well-being of aged or disabled persons. These crimes

1 include the criminal offenses set forth in any of the following Articles of Chapter 14 of  
2 the General Statutes: Article 6, Homicide; Article 7A, Rape and Other Sex Offenses;  
3 Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury  
4 or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary  
5 and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny;  
6 Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats;  
7 Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit  
8 Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses  
9 against Public Morality and Decency; and Article 59, Public Intoxication. These crimes  
10 also include possession or sale of drugs in violation of the North Carolina Controlled  
11 Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related  
12 offenses such as driving while impaired in violation of G.S. 20-138.1 through G.S. 20-  
13 138.5.

14 (e) Penalty for Furnishing False Information. – Any applicant for employment  
15 who willfully furnishes, supplies, or otherwise gives false information on an  
16 employment application that is the basis for a criminal history record check under this  
17 section shall be guilty of a Class A1 misdemeanor.

18 (f) Conditional Employment. – A nursing home or home care agency may  
19 employ an applicant conditionally prior to obtaining ~~the results of a criminal history~~  
20 ~~record check regarding the applicant~~ a determination from the Department based on its  
21 review of the criminal history conducted under subsection (i) of this section if both of  
22 the following requirements are met:

23 (1) The nursing home or home care agency shall not employ an applicant  
24 prior to obtaining the applicant's consent for a criminal history record  
25 check as required in subsection (a) of this section or the completed  
26 fingerprint cards as required in G.S. 114-19.10.

27 (2) The nursing home or home care agency shall submit the request for a  
28 criminal history record check not later than five business days after the  
29 individual begins conditional employment.

30 The nursing home or home care agency shall terminate immediately the conditional  
31 employment of an individual upon receipt of notification from the Department that it  
32 has determined upon review of the criminal history that the individual is unfit to be  
33 responsible for the safety or well-being of aged or disabled persons.

34 (g) Immunity From Liability. – An entity and officers and employees of an entity  
35 shall be immune from civil liability for failure to check an employee's history of  
36 criminal offenses if the employee's criminal history record check is requested and  
37 received in compliance with this section.

38 (h) Notice to Applicant. – At the time of application, the individual whose  
39 criminal history is to be checked shall be furnished with a statement substantially  
40 similar to the following:

41 **"NOTICE**

**MANDATORY CRIMINAL HISTORY CHECK**

**NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CARE TO RESIDENTS OF NURSING HOMES AND PERSONS EMPLOYED BY HOME CARE AGENCIES AND WHO ARE NOT REQUIRED TO HAVE AN OCCUPATIONAL LICENSE TO PROVIDE THE CARE.**

'Criminal history' includes county, state, and federal convictions or pending indictments of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Devices or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If you have ever been convicted of homicide or rape, or if you have been convicted of any of the other crimes listed in the criminal history within 10 years preceding the date of application for employment, you will be determined as unfit to have responsibility for the safety and well-being of aged or disabled persons. If you have been convicted of any of the crimes other than murder or rape and the conviction occurred 10 or more years preceding the date of application for employment, the facility may determine your fitness based on your criminal history information and whether your name is listed in the Health Care Personnel Registry pursuant to G.S. 131E-256.

If it is determined, based on your criminal history or listing in the Health Care Personnel Registry, that you are unfit to have responsibility for the safety and well-being of aged or disabled individuals, you shall have the opportunity to complete, or challenge

1 the accuracy of, the information contained in the SBI or FBI  
2 identification records or in the Health Care Personnel Registry.

3 If you disagree with the determination of the Department of Health  
4 and Human Services on your fitness to provide care, you may file a  
5 petition for a hearing with the Office of Administrative Hearings under  
6 Chapter 150B of the General Statutes within 60 days of the date you  
7 receive notice of the Department's determination.

8 Any individual who intentionally falsifies any information required  
9 to be furnished to conduct the criminal history shall be guilty of a  
10 Class A1 misdemeanor."

11 (i) Department Review of Criminal History. – Within five business days of  
12 receipt of the criminal history of an individual conditionally employed or an applicant  
13 for employment under this section, the Department shall, after review of the criminal  
14 history in accordance with this section, make a determination as to the fitness of the  
15 individual to be responsible for the safety and well-being of aged or disabled persons.  
16 By the next business day following its determination, the Department shall provide its  
17 written determination to the nursing home, home care agency, or contract agency of a  
18 nursing home or home care agency and shall also provide to the individual applicant or  
19 conditional employee a written statement as to the Department's determination and the  
20 basis on which it was made. The notice to the individual shall also provide that if the  
21 individual disagrees with the Department's determination the individual may file a  
22 petition for a hearing under Chapter 150B of the General Statutes within 60 days of the  
23 date the individual receives the Department's determination. The Department shall  
24 maintain a record of each determination made, and the determination shall be binding  
25 on the Department for subsequent reviews of the same individual except to the extent  
26 that new information is obtained by the Department in the subsequent review. A  
27 determination issued by the Department to the requesting nursing home, home care  
28 agency, or contract agency of a nursing home or home care agency is a final agency  
29 decision. An individual denied employment or terminated from conditional  
30 employment based on the Department's determination may file a petition for a contested  
31 case under Chapter 150B of the General Statutes within 60 days of the date the  
32 individual receives the Department's determination. All information that the Department  
33 receives through the checking of the criminal history is privileged information and is  
34 not a public record but is for the exclusive use of the Department and those persons  
35 authorized under this section to receive the information. The Department may destroy  
36 the information after it is used for the purposes authorized by this section after one  
37 calendar year.

38 (j) Fitness for Employment. – An applicant is unfit to be responsible for the  
39 safety and well-being of aged or disabled persons if the applicant's criminal history  
40 shows that:

1           (1)    The applicant was convicted of any of the offenses of Homicide under  
2                    Article 6 of Chapter 14 of the General Statutes or Rape and Other Sex  
3                    Offenses under Article 7A of Chapter 14 of the General Statutes.

4           (2)    The applicant was convicted of any other offense listed in subsection  
5                    (d) of this section within 10 years prior to the date of application for  
6                    employment.

7           If an applicant's criminal history shows that the applicant was convicted of an  
8                    offense listed in subsection (d) of this section, other than homicide or rape and other sex  
9                    offenses, and the conviction occurred 10 or more years prior to the date of the  
10                   application, the Department shall obtain the public record document reflecting the  
11                    offense and shall provide the public record of that conviction to the nursing home, home  
12                    care agency, or contract agency of the nursing home or contract agency and the nursing  
13                    home, home care agency, or contract agency may consider whether or not to hire the  
14                    applicant after considering the factors contained in subsection (b) of this section."

15           **SECTION 3.** G.S. 114-19.10 reads as rewritten:

16           **"§ 114-19.10. Criminal history record checks for adult care homes, nursing homes,**  
17                    **home care agencies, and area mental health, developmental disabilities,**  
18                    **and substance abuse services authorities.**

19           The Department of Justice may provide to the following entities the criminal history  
20 from the State and National Repositories of Criminal Histories:

21           (1)    Nursing homes or combination homes licensed under Chapter 131E of  
22                    the General Statutes.

23           (2)    Adult care homes licensed under Chapter 131D of the General  
24                    Statutes.

25           (3)    Home care agencies licensed under Chapter 131E of the General  
26                    Statutes.

27           (4)    Area mental health, developmental disabilities, and substance abuse  
28                    services authorities licensed under Chapter 122C of the General  
29                    Statutes, including a contract agency of an area authority that is subject  
30                    to the provisions of Article 4 of that Chapter.

31           ~~The~~ For national checks, the criminal history shall be provided to nursing homes and  
32                    home care agencies for employment positions covered by Public Law 105-277. For  
33                    employment positions in nursing homes and home care agencies not covered by Public  
34                    Law 105-277, and for all other agencies listed in this section, the national criminal  
35                    history shall be provided to the Department of Health and Human Services, Division of  
36                    Facility Services. For State checks, the criminal history shall be provided to nursing  
37                    homes and home care agencies in accordance with G.S. 131E-265, to adult care homes  
38                    in accordance with G.S. 131D-40, and to area mental health, developmental disabilities,  
39                    and substance abuse services authorities in accordance with G.S. 122C-80. The  
40                    requesting entity shall provide to the Department of Justice, along with the request, the  
41                    fingerprints of the individual to be checked if a national criminal history record check is  
42                    required, any additional information required by the Department of Justice, and a form

1 signed by the individual to be checked consenting to the check of the criminal record  
2 and to the use of fingerprints and other identifying information required by the State or  
3 National Repositories of Criminal Histories. If a national criminal history record check  
4 is required, the fingerprints of the individual shall be forwarded to the State Bureau of  
5 Investigation for a search of the State's criminal history record file, and the State Bureau  
6 of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation  
7 for a national criminal history record check. All information received by the entity shall  
8 be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as  
9 applicable. The Department of Justice shall charge a reasonable fee for conducting the  
10 checks authorized by this section. The fee for the State check may not exceed fourteen  
11 dollars (\$14.00)."

12         **SECTION 4.** There is appropriated from the General Fund to the  
13 Department of Health and Human Services, Division of Facility Services, the sum of  
14 one hundred thirty-three thousand three hundred twenty-eight dollars (\$133,328) for the  
15 2001-2002 fiscal year and the sum of one hundred fifty-three thousand seven hundred  
16 seventy dollars (\$153,770) for the 2002-2003 fiscal year. These funds shall be used to  
17 carry out the duties required under this act.

18         **SECTION 5.** This act becomes effective October 1, 2001.